



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
P.O. BOX 2360  
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**Date:** 03/19/2018  
**Time:** 03:15 PM  
**Location:** 229  
**Committee:** Senate Education

**Department:** Education

**Person Testifying:** Dr. Christina M. Kishimoto, Superintendent of Education

**Title of Bill:** HB 2176, HD2 RELATING TO EDUCATION.

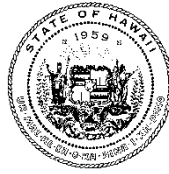
**Purpose of Bill:** Establishes a process for awarding Department of Education contracts for student transportation services and facility construction that includes public comment. Prohibits protests and judicial review of contract awards made pursuant to the process. (HB2176 HD2)

**Department's Position:**

The Department of Education (DOE) supports the intent of this measure, but defers to the appropriate subject matter experts as to the constitutional due process requirements being met by the proposed change.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at [www.hawaiipublicschools.org](http://www.hawaiipublicschools.org).

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
  
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**TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE  
ON  
EDUCATION**  
Monday, March 19, 2018, 3:15 p.m.

**HOUSE BILL 2176 HD 2  
RELATING TO EDUCATION**

Chair Kidani, Vice-Chair Kahele, and members of the committee, thank you for the opportunity to submit testimony on House Bill 2176, HD 2. The State Procurement Office (SPO) opposes the exemption language of the Bill.

This bill is removing all of DOE construction and transportation from accessing further judicial review which could be perceived to be punitive in nature. This is in essence an exemption to the normal course of the procurement process which concerns the SPO. With no justification for this exemption, it would be difficult to support the bill as written. The fact that it could take a long period of time to complete the judicial process is not, in itself, justification to eliminate this process. It would be expeditious to eliminate free speech and due process from all law but it is unlikely we would appreciate the result.

Dan Gordon, the former Obama administration head of the Office of Federal Procurement Policy and now associate dean for government procurement law studies at George Washington University Law School, talks<sup>1</sup> to the positive reasons to maintain a fair protest process.

Overall, Gordon finds the bid protest process to be positive for the procurement system, citing several advantages:

- Protests introduce a relatively low-cost form of accountability into acquisition systems by providing disgruntled participants a forum for airing their complaints;
- They can increase potential bidders' confidence in the integrity of the procurement process if the <State> is directly responsive to participants' complaints, leading more players to participate;

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<sup>1</sup> Clark, Charles, March 12, 2013, Government Executive, "Bid Protests Are Worth Their Costs, Ex-Procurement Chief Says"

- Protests can increase the public's confidence in the integrity of the public procurement process; --The known availability of the protest avenue empowers those in contracting agencies who face pressure to act improperly;
- Protest decisions made public provide a high level of transparency into what is happening in the federal procurement system; and
- Protests provide guidance.

Exemptions from the Procurement Code is not recommended. The code is the single source of public procurement policy to be applied equally and uniformly, while providing fairness, open competition, a level playing field, government disclosure and transparency in the procurement and contracting process vital to good government.

Public procurement's primary objective is to provide everyone equal opportunity to compete for government contracts, to prevent favoritism, collusion, or fraud in awarding of contracts. To legislate that any one entity should be exempt from compliance with both HRS chapter 103D and 103F conveys a sense of disproportionate equality in the law's application.

Exemptions to the code mean that all procurements made with taxpayer monies will not have the same oversight, accountability and transparency requirements mandated by those procurements processes provided in the code. It means that there is no requirement for due diligence, proper planning or consideration of protections for the state in contract terms and conditions, nor are there any set requirements to conduct cost and price analysis and market research or post-award contract management. As such, Agencies can choose whether to compete any procurement or go directly to one contractor. As a result, leveraging economies of scale and cost savings efficiencies found in the consistent application of the procurement code are lost. It also means Agencies are not required to adhere to the code's procurement integrity laws.

The National Association of State Procurement Officials state: "Businesses suffer when there is inconsistency in procurement laws and regulations. Complex, arcane procurement rules of numerous jurisdictions discourage competition by raising the costs to businesses to understand and comply with these different rules. Higher costs are recovered through the prices offered by a smaller pool of competitors, resulting in unnecessarily inflated costs to state and local governments."

When public bodies, are removed from the state's procurement code it results in the harm described above. As these entities create their own procurement rules, businesses are forced to track their various practices. Moreover, a public body often can no longer achieve the benefits of aggregation by using another public body's contract because different state laws and regulations may apply to the various public bodies making compliance more difficult.

Each year new procurement laws are applied to state agencies causing state agency contracts to become more complex and costly, while other public bodies, such as agencies with strong legislative influence, are exempted. Relieving some public bodies from some laws by exempting or excluding them from compliance with a common set of legal requirements creates an imbalance wherein the competitive environment becomes different among the various jurisdictions and the entire procurement process becomes less efficient and costlier for the state and vendors.

Thank you.